

RESOLUTION NUMBER 22-01

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY, FLORIDA ALLOWING FOR ADVERTISING ON BUS SHELTERS AND BENCHES WITHIN THE TOWN'S JURISDICTIONAL LIMITS AND, CLARIFYING MAINTENANCE RESPONSIBILITIES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town desires to have bus benches and shelters throughout the bus routes within Fort Myers Beach that are provided by Lee County, Florida through LeeTran ("County"); and

WHEREAS, the County collects fees for advertising on its bus benches and shelters to offset maintenance costs of the bus benches and shelters; and

WHEREAS, the Town Council previously discussed with the County allowing advertising on bus benches and shelters located within the Town and applying for grant funding for the procurement of bus benches and shelters and offset maintenance costs of the bus benches and shelters; and

WHEREAS, it is in the best interest of the Town, its business owners, property owners, residents, and visitors to enter into the Interlocal Agreement with the County attached as Exhibit "A" to this Resolution, to provide bus benches and shelters within the Town and to allow the County to collect fees for advertising on its bus benches and shelters to offset maintenance costs of the bus benches and shelters.

NOW, THEREFORE, BE IT HEREBY RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Interlocal Agreement ("Agreement") between the Town and the County attached as Exhibit "A" is approved and the Mayor is authorized to execute the Agreement

128455213.1

129336406.1

on behalf of the Town and the Town Manager or designee is authorized to take necessary actions to implement this Resolution and the Agreement.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

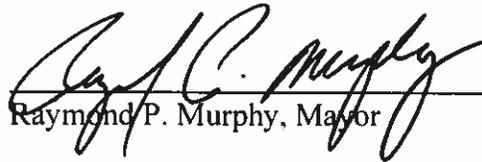
Section 4. This Resolution shall become effective upon adoption by the Town Council.

The forgoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Council Member Veach, and upon being put on a roll call vote, the results was as follows:

| | |
|-------------------------------|-----|
| Raymond P. Murphy, Mayor | aye |
| Rexann Hosafros, Vice Mayor | aye |
| Dan Allers, Council Member | aye |
| Jim Atterholt, Council Member | aye |
| Bill Veach, Council Member | aye |

ADOPTED this 10th day of January 2022 by the Town Council of the Town of Fort Myers Beach, Florida

TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:



Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

 VICTOR SANABRIA ON
BEHALF OF JOHN HERIN

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 27 day of January 2022

128455213.1

129336406.1

**INTERLOCAL AGREEMENT FOR TRANSIT SERVICE
BY AND BETWEEN LEE COUNTY, FLORIDA AND
THE TOWN OF FORT MYERS BEACH, FLORIDA**

THIS INTERLOCAL AGREEMENT ("*Interlocal Agreement*") is made and entered into this _____ day of _____, 2022, by and between **Lee County**, a political subdivision and charter county of the State of Florida (hereinafter referred to as "*County*"), acting by and through its **Board of County Commissioners**, the governing body thereof, and the **Town of Fort Myers Beach**, a municipal corporation of the State of Florida (hereinafter referred to as "*Town*"), acting by and through its **Town Council**, the governing body thereof (collectively the "*Parties*" hereto).

RECITALS

WHEREAS, both the County and Town are duly empowered pursuant to Florida Statutes, in particular, Section 163.01, to enter into Agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the County owns and operates a mass transit system known as LeeTran which provides bus service to the Town; and

WHEREAS, the County maintains bus stops and shelters, benches, trash receptacles and bike racks (hereinafter referred to as Amenities) at LeeTran bus stops in the Town; and

WHEREAS, the Town is responsible for trash removal at LeeTran bus stops in the Town; and

WHEREAS, Florida Statutes § 337.408 allows bus stops and Amenities to be installed within rights-of-way, provided that the bus stops and Amenities are for the comfort and convenience of the general public or at designated stops on official bus routes; and

WHEREAS, the County operates a bus shelter and bench advertising program that generates revenue for the County to offset cost associated with maintaining bus stops; and

WHEREAS, the County and Town find that entering into this Agreement serves a public purpose and is to the public's benefit.

NOW, THEREFORE, the Parties agree with one another as follows:

SECTION I: RECITALS ADOPTED

A. The above recitals are hereby adopted by the Parties as being true and accurate to the best of their knowledge, and as if set out further at length in this Agreement.

SECTION II: AMENITIES PLACEMENT, SPECIFICATIONS, AND ILLUMINATION

A. The County may place Amenities only along officially designated LeeTran bus routes within the corporate limits of the Town. The Town may request additional bus stops and Amenities along officially designated LeeTran bus routes, at the Town's expense, with the County's approval. Town requested Amenities shall be replaced by the Town at the end of its useful life. All shelter specifications shall at all times be in accordance with all federal, state, County and Town specifications. The Town shall pay the cost to install, relocate or remove Amenities as required by the Town, for the Town's work, within or adjacent to the Town, County and/or Florida DOT (FDOT) maintained rights-of-way.

B. For consistency of transit bus stops, the County shall have the right to determine, in its sole discretion, the style, colors, and advertising content used for the Amenities placed within the Town. Acceptable advertising content based on the County's strict and thorough advertising policy.

C. Any shelter the County wishes to illuminate will be subject to Florida Statutes § 337.408 and prior approval must be obtained from the Town's Building & Zoning Department, to include local lighting requirements. If the Town receives complaints regarding the intensity of illumination, the County will work to address the complaints. The County will illuminate shelters, which during the permitting process, have been identified for safety or security reasons.

SECTION III: PERMITTING

A. The County, Town or its agent shall follow normal permitting procedures prior to placing bus stops and Amenities within the corporate limits of the Town. Both the Town and the County shall obtain all necessary easements, rights-of-way, or permissions. During the permitting process, the Town and the County will have an opportunity to review and approve the locations within its jurisdiction. The Town and County will direct its contractor to submit all permit requests to the appropriate Building & Zoning Department. The Town's Building & Zoning, Fire, Police and Engineering Department will review all plans. All plans must be countersigned as to location by the Town Engineer before approval. The Town agrees to waive any permit fee required in permitting the placement of bus stops and amenities within Town limits.

SECTION IV: MAINTENANCE AND ADMINISTRATION

A. The County shall be responsible for the maintenance of all bus stops and Amenities in the Town in a clean and workmanlike manner, and shall make all repairs

within a reasonable timeframe, agreed upon with the Town from any written request from the Town. Safety-related repairs shall be made immediately. If the County fails to make any repair within the agreed upon timeframe or make any safety-related repair within seventy-two (72) hours of receipt of written request, the Town may undertake repairs and bill the County for the cost of such repairs. The County, upon receipt of such invoice, shall reimburse the Town for the cost of such repairs. Amenities whereas the Town has requested or installed will be replaced by the Town at the end of its useful life.

B. Trash within receptacles at the bus stops will be collected by the Town and must be emptied when full, but in any event, not less than once every seven (7) days.

C. The County shall provide all necessary administrative services for the operation of a mutually beneficial bus stop program within the corporate limits of the Town.

SECTION V: ADVERTISING REVENUE

A. The County will receive proceeds generated through the bus shelter and bench advertising program to offset maintenance of bus stops and their Amenities and associated costs.

SECTION VI: LIABILITY

A. The Parties agree that by execution of the Agreement, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for in Section 768.28, Florida Statutes, as may be revised or amended from time to time.

SECTION VII: TERM

A. This Interlocal Agreement will remain in full force and effect for a term of ten (10) years from the date of approval by the Parties. At the end of the initial ten (10) year term, the Agreement shall automatically renew for an additional ten (10) year period unless either Party elects to terminate the Agreement. Any party desiring not to renew the Agreement shall send written notice at least sixty (60) days prior to the expiration of the term.

SECTION VIII: ENTIRE UNDERSTANDING

A. This Agreement constitutes the entire understanding for general bus stop and Amenities placement and maintenance between the Parties, and any previous Agreements pertaining to the above-stated, whether written or oral, shall be superseded by the Agreement.

SECTION IX: MODIFICATIONS, DISPUTE RESOLUTION, AND TERMINATION

A. All modifications or amendments to this Agreement must be in writing signed by both Parties with the same formality as that contained herein.

B. If both parties agree, any disputes arising from this Agreement which cannot be resolved by the Parties may be settled through voluntary mediation. The Parties may also utilize any other legal remedies available under Florida law to either Party with respect to the disputed matters.

C. Either Party may terminate this Interlocal Agreement for any reason by giving the non-terminating party ninety (90) days written notice of its cancellation. In the event of termination, the Town will be responsible for paying any costs per this Interlocal Agreement incurred up to the date of termination and the County will retain ownership of the Amenities.

SECTION X: NOTICE

A. All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective Parties as follows:

Lee County: LeeTran Director
3401 Metro Parkway
Fort Myers, Florida 33901

Town of Fort Myers Beach: Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

The address to which any notice or demand may be given to either party may be changed in writing.

SECTION XI: SEVERABILITY

A. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

SECTION XII: FILING

A. This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the Town of Fort Myers Beach.

(Balance of Page Left Intentionally Blank)

IN WITNESS WHEREOF, the PARTIES have caused this Interlocal Agreement to be executed on the day and year first above written.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
[Signature]

BY: _____
[Signature]

[Type or Print Name]

[Type or print name]

APPROVED AS TO FORM FOR RELIANCE OF LEE COUNTY ONLY:

BY: _____
Lee County Attorney's Office